

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of the Association for Local
Telecommunications Services (ALTS) for a
Declaratory Ruling Establishing Conditions
Necessary to Promote Deployment of
Advanced Telecommunications Capability
Under Section 706 of the Telecommunications
Act of 1996

CC Docket No. 98-78

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits its Comments in support of the above-captioned Petition by the Association for Local Telecommunications Services ("ALTS").

I. INTRODUCTION

The ALTS petition is prompted by the fact that many incumbent local exchange carriers ("ILECs") are not cooperating with their competitors in the offering of advanced telecommunications services. Although competitive local exchange carriers ("CLECs") have entered into agreements with ILECs across the nation to obtain UNEs, a number of ILECs have refused to provide network elements needed for the provision of advanced telecommunications services. ILECs also have been uncooperative in interconnecting with CLEC advanced data services.

ALTS' petition presents the Commission with the opportunity to clarify that ILEC obligations under Sections 251 and 252 of the Communications Act -- obligations which must be met in order to satisfy the requirements of Section 271 -- include

interconnection with and access to network elements necessary to provide advanced data services.

Such a clarification is needed. Many ILECs have claimed that they do not have to provide access to advanced network features and functionalities, in transparent efforts to keep their competitors from these markets.¹ At the same time as they have been resisting CLEC efforts to obtain such technologies, “ILECs already have embarked on an ambitious rollout plan for xDSL and other advanced technologies, and the new services they make possible.”² ALTS specifically noted the recent announcements by US West, Bell Atlantic, BellSouth, and GTE.³

These ILECs incorrectly claim that advanced telecommunications services fall outside of the definition of unbundled network elements or are beyond the requirements for interconnection established in the Act and by the Commission. The fact is, however, that the facilities requested by the ALTS petition fall squarely within the “features, functions, and capabilities associated with” each of the elements that the Commission has required be unbundled. The Commission should therefore promptly mandate that ILECs must interconnect for purposes of providing advanced services and that they must offer UNEs that can be used by CLECs to provide such services.

¹ See Petitions of Bell Atlantic, US West, and Ameritech for Relief under Section 706 of the Telecommunications Act of 1996, CC Docket Nos. 98-11, 98-26, 98-32; Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Relief from Regulation, CC Docket No. 98-91.

² ALTS Petition at 8.

³ Id.

II. ILECS ARE OBLIGATED TO PROVIDE xDSL AND OTHER UNEs NEEDED TO OFFER ADVANCED TELECOMMUNICATIONS SERVICES

At the outset, it is important to recognize one key fact: the obligations of Sections 251 and 252 of the Act, and as incorporated in Section 271, apply to *all* telecommunications services. These pivotal provisions of the Act are not rendered powerless with respect to new technologies and services. To the contrary, the Act is intended to foster “advanced telecommunications and information technologies and services.”⁴ The ALTS Petition demonstrates that deployment of advanced telecommunications services will best be promoted by recognizing that providers of advanced telecommunications services have the same standing as “providers of plain old telephone services” (“POTS”) in terms of their entitlement to the rights, benefits and protections spelled out in Sections 251, 252, and 271.

Despite what appears plain from the Act, however, TCG has encountered RBOC resistance, delay, and refusal to provide facilities necessary for the provision of advanced telecommunications services on an unbundled basis. For example, for over six months TCG has been unable to obtain Bell Atlantic’s agreement to provide HDSL compatible loops. At one point, Bell Atlantic even claimed that it needed to conduct a “trial” of HDSL compatible loops before it could consider providing them to TCG -- notwithstanding the fact that it was already providing HDSL services itself routinely over its own network. Although TCG has repeatedly asked for an ordering process for HDSL compatible loops, Bell Atlantic has failed to deliver a long-promised tariff for HDSL compatible loops. At the same time, Bell Atlantic has publicly announced the roll-out of

⁴ See Conference Report No. 104-458, 104th Congress at 1.

its own ADSL service. TCG also has been rebuffed by several ILECs in its efforts to interconnect its frame relay network with the ILEC's network for purposes of exchanging frame relay traffic.

ALTS also documents numerous RBOC refusals to acknowledge their obligation to provide interconnection to network elements needed to provide advanced data services. ALTS correctly recognizes that CLEC access to unbundled advanced data facilities is essential to their ability to compete to provide the services customers are requesting.⁵

TCG believes that the Commission's present policies are clear in requiring that xDSL compatible copper loops are UNEs that must be provided to competitors. An unbundled network element is defined in the Act as "a facility or equipment used in the provision of a telecommunications service,"⁶ which includes the "physical facilities of the network, together with the features, functions, and capabilities associated with those facilities."⁷ Those "features, functions, and capabilities" include "embedded features" which "are part of the characteristics of that element and may not be removed from it."⁸ The ability of an xDSL compatible loop to carry high speed data is an "embedded feature," functionally inseparable from the physical xDSL-conditioned copper loop, which is expressly a UNE under the Local Competition First Report and Order.⁹ While

⁵ ALTS Petition at 14-17.

⁶ 47 U.S.C. § 153(29).

⁷ Local Competition First Report and Order, 11 FCC Rcd 15499, 15631 (¶ 258) (1996) (emphasis added); 47 U.S.C. § 153(29).

⁸ Local Competition First Report and Order, 11 FCC Rcd at 15632 (¶260).

⁹ Id. at 15691 (¶ 380).

TCG believes that this requirement is clear, the Commission should remove any possible ILEC arguments to the contrary by clearly stating this fact.

TCG believes, however, that access to unbundled xDSL compatible copper loops *alone* may not be sufficient to permit the development of competition for advanced data services. There may be many circumstances in which xDSL compatible loops cannot be delivered to the CLEC at its collocation arrangement in an ILEC end office. For example, ILECs may choose to provision services using intermediate electronics in the feeder and distribution plant so that xDSL compatible copper loops no longer exist from the central office to the customer. In such circumstances, the ILEC can nonetheless offer xDSL services to its customers because it can locate electronics “in the field” where an xDSL compatible copper facility exists, and from that location it can then utilize electronics and other transmission media (such as ATM) to carry the customer’s traffic to the central office.¹⁰ Accordingly, the ILEC must be required to offer, as a UNE, access to the functionality of the xDSL services it is offering to its

¹⁰ For example, an ILEC could terminate copper loops in a small vault located in a neighborhood, and install xDSL electronics at the vault and the customer location, while using ATM or other technologies to connect the vault to the central office. Using this architecture, the ILEC can offer its customers xDSL services, while claiming that it has no xDSL compatible loops to provide to a competitor. Absent appropriate UNE policies, as such architectures proliferate, more and more ILEC customers will be left in a situation where only the ILEC can provide xDSL services.

customers.¹¹ TCG believes that the Commission can, within the scope of its existing policies, declare that ILECs bear this responsibility.¹²

A requirement that xDSL functionalities must be offered as UNEs would be consistent with the Commission's previous recognition that the UNE definition includes functional UNEs, such as operations support systems ("OSS") and shared transport. OSS, for example, is a functionality rather than a distinct, tangible facility; it is comprised of software systems and databases used to provide access to preordering, ordering and provisioning, maintenance and repair, billing, and operator assistance/directory assistance functions. Affirming the Commission's authority to require OSS unbundling, the Eighth Circuit rejected petitioners' argument that UNEs must be limited to physical components of a network.¹³ The Court found that "[s]imply because these capabilities can be labeled as 'services' does not convince us that they were not intended to be unbundled as network elements."¹⁴

Similarly, shared transport is a UNE, even though it is shared among numerous users and is not a distinct facility.¹⁵ Shared transport "encompasses a facility shared by

¹¹ TCG does not believe that the provision of the xDSL functionality represents a "combining" of separate UNEs. Because the individual physical elements of the ILEC xDSL services are not, as a practical matter, separately usable, the entire xDSL functionality should be considered to be a single UNE.

¹² Should the Commission conclude that its current UNE rules and policies are not sufficiently broad as to include UNE functionalities used to provide advanced services, TCG recommends that the Commission promptly initiate a Notice of Proposed Rulemaking to amend its current UNE rules to include this capability.

¹³ Iowa Utils. Bd. v. F.C.C., 120 F.3d 753, 808 (8th Cir. 1997).

¹⁴ Id. at 809.

¹⁵ Local Competition First Report and Order, 11 FCC Rcd at 15718 (¶ 450), aff'd. Third Order on Reconsideration, 12 FCC Rcd 12460 (1997) ("Shared

multiple carriers, including the incumbent LEC.”¹⁶ It is, therefore, quite similar in concept to the “xDSL functionality” that should be offered to competitors, in that both can be defined in terms of a communications path with particular characteristics between two points that utilizes shared electronic and transmission facilities. While Ameritech argued in the Commission’s proceeding on its Michigan Section 271 application that a UNE can only be a discrete facility or piece of equipment that the requesting carrier identifies in advance,¹⁷ the Commission rejected this argument. Instead, the Commission reiterated its conclusion in the Local Competition First Report and Order that ILECs are required to provide requesting carriers with access to the same transport facilities between the end office and the tandem switch that the ILEC uses to carry its own traffic.¹⁸ Thus, the Commission squarely has rejected the notion that a UNE is limited to discrete network facilities used to carry a telecommunications transmission.

TCG also believes that there are no practical impediments to the provisioning of the xDSL functionality for CLECs, and no legal basis to refuse to provide this capability to competitors. ILECs offer such xDSL capabilities to their retail customers today and can be required to offer the same functionalities as UNEs to their competitors. While

Transport Order”).

¹⁶ Shared Transport Order, 12 FCC Rcd at 12474 (¶ 22).

¹⁷ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, 20703 (¶ 303) (1997).

¹⁸ Id. at 20705 (¶ 306); see also Shared Transport Order, 12 FCC Rcd at 12484-85 (¶¶ 41, 43) (rejecting Ameritech’s arguments that network elements must be partly or wholly dedicated to a customer and that a network elements must be an

the Commission must consider whether access to proprietary elements would be “necessary”¹⁹ and whether lack of access to an element would “impair the ability of the . . . carrier seeking access to provide the services that it seeks to offer”²⁰ (the “impairment” standard), TCG believes that neither of these concerns poses any obstacle to offering xDSL functionality as a UNE.

The Commission’s “impairment” standard seeks primarily to improve a market entrant’s competitiveness, as it focuses on whether a new entrant’s provision of service is impaired if a lack of access results in declining service quality and/or rising service costs, compared to providing the same service using an unbundled element in the ILEC’s network.²¹ Arbitrary prohibition by ILECs on the availability of xDSL type technologies to its competitors impacts the quality, availability and prices of data services.²² Additionally, it is not apparent that there would be any requirement that CLECs have access to proprietary elements, or that if such access is possible that it cannot be managed through appropriate agreements and undertakings. Therefore, there would not appear to be any impediment to the Commission’s authority to require that xDSL functionalities be provided as UNEs.

identifiable portion of the network).

¹⁹ 47 U.S.C. §251(d)(2)(A).

²⁰ 47 U.S.C. §251(d)(2)(B).

²¹ Local Competition First Report and Order, 11 FCC Rcd at 15643 (¶ 285).

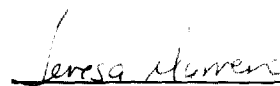
²² See ALTS Petition at 16 (explaining that some xDSL services cannot operate beyond a distance 12,000-18,000 feet, requiring the use of mid-loop electronics, which “effectively preclude[] CLECs from providing xDSL over unbundled ILEC loops”).

III. CONCLUSION

The Commission should clarify that ILECs are obligated to provide interconnection with and access to unbundled networks for advanced services, in accordance with Sections 251 and 252, and as a precondition to interLATA service offerings under Section 271. CLECs must have access to all the features and functionalities of UNEs to provide advanced telecommunications services in competition with the RBOCs. This requires that ILECs provide xDSL compatible copper loops wherever they are available. It also requires that ILECs provide xDSL functionality in cases in which they offer such services to their customers. While TCG believes that a declaratory ruling affirming ILEC obligations in this regard is consistent with the Commission's current rules and definitions for UNEs, in the alternative the Commission could elect to conduct a Notice of Proposed Rulemaking to adopt specific and formal rules for this purpose.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.



J. Manning Lee
Vice President – Regulatory Affairs

Teresa Marrero
Senior Regulatory Counsel – Federal
2 Teleport Drive, Suite 300
Staten Island, New York 10311
(718) 355-2939

Its Attorneys

Dated: June 18, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments was sent by hand-delivery and first-class mail, as indicated, this 18th day of June, 1998, to the following:

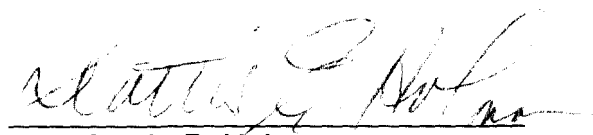
Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

ITS
1231 20th Street, N.W., Rm. 102
Washington, D.C. 20037

Richard J. Metzger*
Emily Williams
Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Brad E. Mutschelknaus/Jonathan E. Canis/*
John J. Heitmann
Kelley Drye & Warren LLP
1200 19th Street, N.W., 5th Floor
Washington, D.C. 20554


Dottie E. Holman

*first-class mail